BALANCING PUBLIC MARKET BENEFITS AND BURDENS FOR SMALLER COMPANIES POST SARBANES-OXLEY

PAUL ROSE*

Accumulating evidence suggests that several recent regulations enacted by Congress and the SEC, including the Sarbanes-Oxley Act,[1] have disproportionately burdened smaller public companies in a negative manner, such that many of these companies are exiting the public markets. This Article describes these regulations, reviews their effects, and proposes several options that the SEC might choose to address the imbalance of costs and benefits for small businesses. The simplest option would provide for a waiver or postponement of certain regulations imposed under the Sarbanes-Oxley Act. More significant possible measures include the expansion of the SEC's small business regulatory regime under Regulation S-B,[2] and the creation of a securities market for small-business issuers.

INTRODUCTION

The Securities and Exchange Commission has generally recognized the need to tailor its regulations not only to satisfy investor expectations but also to reduce costs on securities issuers. Ideally, the costs of the SEC's regulatory regime are balanced by its benefits to investors and issuers. However, a series of recent regulations has created an imbalance between these costs and benefits, particularly for small businesses. A few scholars have argued that the Public Company Accounting Reform and Investor Protection Act of 2002[3] (more

self-regulatory organization (SRO) framework through which the SEC oversees larger exchanges such as the NYSE and NASDAQ.